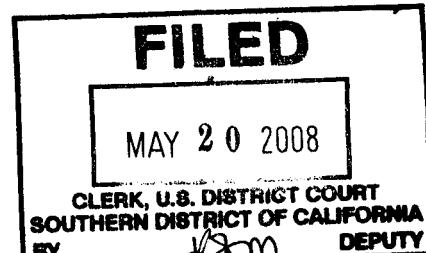


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Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,) Magistrate Case No. 08MJ1398
12)
13 Plaintiff,) STIPULATION OF FACT AND JOINT
14 v.) MOTION FOR RELEASE OF
15 AGUSTIN MADRIGAL-CERVANTES,) MATERIAL WITNESS(ES) AND
16 Defendant.) ORDER THEREON

(Pre-Indictment Fast-Track Program)

17 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and
19 Carla J. Bressler, Assistant United States Attorney, and defendant AGUSTIN MADRIGAL-
20 CERVANTES, by and through and with the advice and consent of defense counsel, David L. Baker,
21 that:

22 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
23 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
24 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
25 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
26 of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.
27 § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

28 //

CJB:es:5/7/08

1
2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
3 provide the signed, original plea agreement to the Government not later than five business days
4 before the disposition date set by the Court.

5. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
6 before **June 5, 2008**.

7. The material witness, Amapola Bautista-Santana, in this case:
8 a. Is an alien with no lawful right to enter or remain in the United States;
9 b. Entered or attempted to enter the United States illegally on or about

10 May 3, 2008;

11 c. Was found in a vehicle driven by defendant at the San Ysidro, California Port
12 of Entry (POE) and that defendant knew or acted in reckless disregard of the fact that she was an
13 alien with no lawful right to enter or remain in the United States;

14 d. Was having others pay on her behalf an undisclosed amount of money to
15 others to be brought into the United States illegally and/or transported illegally to her destination
16 therein; and,

17 e. May be released and remanded immediately to the Department of Homeland
18 Security for return to her country of origin.

19 5. After the material witnesses are ordered released by the Court pursuant to this
20 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
21 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any
22 proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral
23 attack, that:

24 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
25 substantive evidence;

26 b. The United States may elicit hearsay testimony from arresting agents
27 regarding any statements made by the material witness(es) provided in discovery, and such

1 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements
2 against interest of (an) unavailable witness(es); and,

3 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
4 “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted
5 and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant
6 waives the right to confront and cross-examine the material witness(es) in this case.

7 6. By signing this stipulation and joint motion, defendant certifies that defendant has
8 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
9 further that defendant has discussed the terms of this stipulation and joint motion with defense
10 counsel and fully understands its meaning and effect.

11 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
12 immediate release and remand of the above-named material witness(es) to the Department of
13 Homeland Security for return to her country of origin.

14 It is STIPULATED AND AGREED this date.

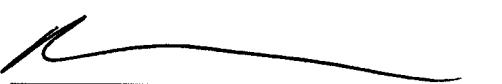
15 Respectfully submitted,

16 KAREN P. HEWITT
17 United States Attorney

18 Dated: 5/20/08.


19 CARLA J. BRESSLER
20 Assistant United States Attorney

21 Dated: 5/9/08.


22 DAVID L. BAKER
23 Defense Counsel for Madrigal-Cervantes

24 Dated: 5/9/08.


25 AGUSTIN MADRIGAL-CERVANTES
26 Defendant

ORDER

SO ORDERED.

Dated: 6/20/08

~~United States Magistrate Judge~~